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Letter dated 6 May 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/437). The Counter-Terrorism Committee has received the attached third report from Andorra submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 3 May 2004 from the Permanent Representative of Andorra to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

At the request of my Government, I have the honour to transmit to you in your capacity as Chairman of the Counter-Terrorism Committee the third report submitted by the Principality of Andorra to the Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

My Government will be happy to provide the Committee with additional information, as necessary.

(*Signed*) Julian **Vila-Coma**
Ambassador
Permanent Representative

Enclosure

[Original: French]

Responses to the comments and questions concerning the content of the third report submitted pursuant to Security Council resolution 1373 (2001)

In accordance with its obligations under paragraph 6 of Security Council resolution 1373 (2001), the Andorran Government submitted a detailed report on 21 December 2001. In response to the request of the Committee contained in its letter of 1 April 2002, a supplementary report providing additional information on a number of issues addressed in the first report was submitted on 10 September 2002.

The present report, which is the third report submitted by the Andorran Government, responds to the questions raised by the Committee in its letter of 7 April 2003.

Once again, the report has been prepared in close collaboration with all the Ministries concerned, namely, the Ministry of Finance, the Ministry of the Interior and Justice and the Ministry of Foreign Affairs, and with the participation of the Money-Laundering Prevention Unit.

We remain entirely at the disposal of the Counter-Terrorism Committee and will be happy to provide the Committee with any additional information that may be necessary.

1.2. The Committee would appreciate receiving an outline and a progress report on the enactment of the proposed revised Code criminalizing the financing of terrorism in all its aspects.

The parliamentary committee responsible for preparing the complete revision of the Penal Code has not yet completed its work.

1.3. The Committee noted from the first and supplementary reports that Andorra had imposed extensive reporting obligations in regard to suspicious transactions and would like to know the penalty for failure to comply with those obligations.

Articles 58 and 59 of the Act on International Cooperation in Criminal Matters and Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime set out the administrative responsibilities and the corresponding penalties imposed by the Andorran Government on the recommendation of the Money-Laundering Prevention Unit, which are applicable without prejudice to criminal liability.

Thus, offences are classified as follows (serious, ordinary and minor):

1. Serious offences:

(a) Failure of those subject to the reporting obligation to comply with it;

(b) Violation of the prohibition contained in article 49, according to which individuals and third parties affected by the report may not, under any

circumstances, be informed of its existence or receive any information about the proceedings under way;

(c) Refusing, resisting or finding excuses for failing to provide the Money-Laundering Prevention Unit with the information referred to in article 51 (b), which provides that those subject to the reporting obligation must, in the exercise of their duties, supply all the information requested, except for the cases mentioned in the last paragraph of article 45, which provides that a number of individuals (external accounting professionals, tax advisers, notaries and other independent legal professionals) shall not be subject to the obligations set out in the Act in respect of:

- Information received by one of their clients or obtained about one of their clients which determines the legal status of that client;
- The preparation of the defence or representation of the client in legal proceedings or in relation to such proceedings, including advice regarding engagement in or possible avoidance of proceedings, regardless of whether or not such information was received or obtained before, during or after those proceedings;

(d) Subsequent commission of an ordinary offence in the course of the same year.

2. Ordinary offences:

(a) Failure to verify the identity of clients in accordance with the provisions of article 51 (c) or failure to request the documents required by that article;

(b) Inadequate verification of the identity of the genuine beneficiary of the transaction, which must be carried out pursuant to article 51 (d);

(c) Failure to monitor and verify identities as provided for in article 51 (e);

(d) Failure to keep documents for the period established in article 51 (f);

(e) Lack of suitable and adequate monitoring and internal communication procedures to prevent money-laundering operations, and failure to conduct the specific audit referred to in article 54;

(f) Subsequent commission of a minor offence in the course of the same year.

3. Minor offences:

(a) Failure to notify the Money-Laundering Prevention Unit of empowered individuals, as provided for in article 48;

(b) Any violation of the provisions of the Act not covered by the preceding paragraphs.

Minor offences are punishable by a written warning and a fine of between 600 and 6,000 euros.

Ordinary offences are punishable by the imposition of a ban on certain financial or commercial transactions (for instance, certain professionals will be prohibited from establishing companies, insurance companies will be prohibited from suggesting financial products such as risk or capital insurance and real estate agents will be prohibited from processing cash transactions in respect of sales and

purchases) and/or the temporary suspension of the directors of the establishment or the professional in question, for from 1 to 6 months, and a fine of between 6,000 and 60,000 euros.

Lastly, serious offences are punishable by the temporary (for up to three years) or permanent suspension of the directors of the establishment or the professional in question and a fine of between 60,000 and 600,000 euros.

In order to distinguish between offences within the defined limits, account must be taken of the gravity of the case, the lack of monitoring, gaps or inadequacies in forecasting mechanisms and the intentionality or degree of negligence involved.

In addition, failure to respect the reporting obligation in respect of suspicious transactions is regarded as a serious offence punishable by the temporary or permanent suspension of the directors of the establishment or the professional in question and a fine of between 60,001 and 600,000 euros, without prejudice to any criminal liability.

1.4. Articles 38 and 47 of the Penal Code do not appear to provide for freezing of funds that are:

- **held in the names of entities and persons identified in lists, such as those approved for the purpose of Security Council resolution 1267 (1999), as being linked to terrorist activities;**
- **of legal origin but used for terrorism either within or outside the territory of Andorra; or**
- **reasonably suspected of links to terrorist acts.**

What is the time period within which Andorra can freeze the funds or other economic resources linked to terrorism? Please provide a detailed outline of legal provisions which fully meet the requirements of this subparagraph or, in their absence, an indication of what action Andorra intends taking in this regard.

The Andorran Government would like to point out that article 47 of the Act on International Cooperation in Criminal Matters and Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime (hereinafter referred to as "the Act") provides that the Money-Laundering Prevention Unit may provisionally block a transaction if it considers such action to be justified by the evidence. However, a distinction must be made between the concept of clues, representing only items of evidence, such as an act, event, object or trail which points to the existence of a fact that must be proved, and the concept of proof, which is far more difficult to establish and requires the demonstration of the existence of the fact or act in the manner prescribed by law.

Article 51 of the Act provides that those bound by it have an obligation to monitor all transactions that, although not suspicious, take place under complex or unusual circumstances and seem to have no economic justification or legal purpose, in particular transactions likely to involve money-laundering and those requiring special monitoring according to the non-restrictive official communications issued by the Money-Laundering Prevention Unit.

Furthermore, the Unit uses those official communications to provide approved lists of entities or individuals regarded as having links to terrorist activities, in order to comply with the various Security Council resolutions. If one of the subjects having an obligation under the Act has reason to suspect that a transaction may be linked to one of the entities or individuals listed in the official communications, that transaction is blocked by the Unit and the corresponding file is subsequently transmitted to the Public Prosecutor.

The Andorran Government is transmitting to the Committee, in a confidential annex, the official communications relating to the Security Council resolutions, together with all the other official communications of potential interest.

With regard to the time period within which Andorra can freeze the funds or other economic resources linked to terrorism, the various processes that may result in the freezing of funds must be dealt with separately.

The Unit requests the blocking of a financial transaction as soon as it receives a report of a suspicious transaction. This prevents clients from making use of the funds until they are authorized to do so by a court. However, the file is transmitted to the office of the Public Prosecutor, which sends it on to the *Batlle* (Andorran court), a process which may take several hours.

In addition, a commission rogatory or an investigation may be initiated on an urgent basis through Interpol. In that case, the Andorran police refers the case to the *Batlle*, which may, depending on the urgency, the importance and the imperatives of the case, decide to freeze the funds immediately.

1.5. Does the law in question impose a requirement for audit of associations and submission of the annual audited balance sheets to the relevant authority?

Article 29 (4) of the Associations Organization Act of 29 December 2000 provides that associations receiving public subsidies must account for the use of those subsidies to the awarding body.

In cases where subsidies have been misused, the awarding body, in accordance with the terms and conditions of the award, requests the beneficiary association to return the subsidy, without prejudice to any liability.

Article 28 (2) of the Act provides that the Andorran Government may prescribe, by means of regulations, additional accounting responsibilities incumbent on associations receiving public subsidies.

To that end, the Rules of Procedure Governing the Award and Monitoring of Public Subsidies and Transfers of 12 July 2000 sets forth the obligations incumbent upon beneficiaries of public assistance.

First, article 6 (3) of the Rules of Procedure provides that associations must submit to the checks carried out by the awarding body or its partners and to the controls established by the Office of the Financial Controller.

That Office is therefore responsible for monitoring subsidies in order to control all public assistance and ensure that the legal provisions applicable to each case are respected.

The objectives of that monitoring are as follows:

(a) To verify the extent to which the general objectives of the publicly funded body or entity are attained;

(b) To verify the existence of the stated objectives and the applicable criteria for the award of subsidies, ensuring that they are clearly and unequivocally defined and in keeping with the applicable legislation;

(c) To show that the administrative management procedures have been implemented rationally and appropriately with a view to the efficient use of available resources, and that the applicable standards, whether general or specific, have been observed;

(d) To verify that the available resources have been used in an effective, efficient and economical manner;

(e) To verify that the amount of the subsidy, taken alone or in conjunction with other subsidies, regardless of their origin, does not exceed the cost of the measures for which the beneficiary requested the subsidy.

Article 15 (3) of the Rules of Procedure sets out the various entities and individuals subject to monitoring by the Office of the Financial Controller. Collaborating entities, beneficiaries and third parties connected with the purpose of the subsidy are also subject to such monitoring and have an obligation to assist the Office in the exercise of its functions. In respect of the award of subsidies to collaborating entities, monitoring may extend to third party individuals linked to the natural or legal persons involved in the process of justifying the use of public funds.

Secondly, the Rules of Procedure provide for two levels of monitoring: internal monitoring covers all the measures taken by the awarding body, including the inspection at all stages from the creation of the file to the award of the subsidy and its payment, with the exception of individual subsidies, which are not subject to prior scrutiny before their approval. External monitoring, on the other hand, deals primarily with the beneficiaries, collaborators and third parties and makes it possible to verify:

(a) That the beneficiary's expense accounts reflect the movements of the subsidy;

(b) Bank statements;

(c) Documentation in the name of the beneficiary justifying the use of the subsidy;

(d) Calculations.

Third parties may also be questioned about their participation or in order to verify the authenticity and validity of the justificatory documents submitted. The physical examination of the object of the subsidy, if possible, is taken into consideration and documentation relating to any additional assistance must also be submitted.

Lastly, article 17 of the Rules of Procedure provides that the Office of the Financial Controller is empowered to prepare an annual audit plan for assistance awarded, which must include the financial controls developed during each accounting period. The Office can, at any time during the accounting period, modify

the plan if it considers that one of the original controls should be eliminated or that a new control not provided for in the plan is necessary.

1.6. The Committee would like to know how Andorra proposes to meet the requirements set forth in article 2 (a), which requires each Member State to criminalize recruitment in its territory to terrorist groups operating either inside or outside its territory.

In addition to the provisions of criminal law, described in previous reports, the parliamentary committee responsible for preparing the complete revision of the Penal Code, which has not yet completed its work, must give consideration to the incorporation into the new text of provisions relating to the prevention of recruitment in Andorran territory of members of terrorist groups operating inside or outside that territory, whether directly or by fraudulent means.

1.7. Please confirm whether article 14 of the Andorran law on extradition is applicable in the case of fugitives who have committed terrorist acts with political motives and, if so, whether that is not a hindrance to the extradition of terrorists who have political motives.

Most extradition treaties currently in force provide that extradition shall not be granted for political offences. To that end, article 14 of the Extradition Organization Act establishes the limitations that must be taken into consideration when authorizing an extradition. Requests for extradition can be refused when the offence in question appears to have political motives.

In that connection, the main problem is the lack of a generally accepted definition of the expression "political offence": it falls to the requested State to interpret it. Andorra has not yet defined the concept of a political offence.

However, on 8 November 2001, the Andorran Government signed the European Convention on the Suppression of Terrorism of 27 January 1977, the essential aim of which is to facilitate the extradition of perpetrators of terrorist acts. Subsequently, on 15 May 2003, Andorra signed the Protocol amending that Convention, the objective of which is to step up the fight against terrorism by means of various measures. The addition of the Protocol makes for an amended Convention that differs significantly from the original, although it retains basically the same aim and is intended to reinforce the initial version. To the end, it lists the offences that the parties undertake not to consider as political offences or as offences inspired by political motives. The Andorran Government intends to ratify the amended Convention at the earliest opportunity, in order to reaffirm its active rejection of terrorism, and to incorporate into its domestic legal order the international provisions relating to the fight against terrorism.

1.8. As indicated on page 12 of the second report, Andorra is negotiating the signing of other bilateral arrangements with regard to the financing of terrorism with Bolivia, the Netherlands, Panama, Poland and the United States of America. The Committee would appreciate a progress report on the negotiations.

The Andorran Government would like to point out that the Money-Laundering Prevention Unit has the authority to cooperate with similar agencies in other countries with regard to the financing of terrorism. In addition, as stipulated in articles 55 and 56 of the Act, cooperation with other similar foreign agencies does

not require the existence of written agreements. To that end, the Unit has acted on cooperation requests from, inter alia, the financial intelligence units of Guernsey, Luxembourg, Monaco, Norway and Switzerland in the absence of pre-existing agreements.

However, some financial intelligence units have requested that cooperation should take place on the basis of a pre-existing bilateral agreement: a standard document prepared by the Egmont Group (known as a memorandum of understanding) through which the various units may cooperate. In that connection, the second supplementary report referred to negotiations between the Andorran Unit and a number of its foreign counterparts. On 17 June 2003, the Andorran Government approved negotiations leading to the signing of such agreements with the financial intelligence units of the following countries: Italy, Liechtenstein, Luxembourg, Mexico, Monaco, the Netherlands, Panama, Poland, Portugal, Romania, the Russian Federation, Slovenia, Switzerland, the United Kingdom, the United States of America, Uruguay and Venezuela. To date, the Unit has signed agreements with Luxembourg, Monaco, Poland and Portugal.

1.9. Subparagraph 3 (d) requires Member States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism. The Committee would appreciate a progress report from Andorra in this regard.

At present, the Andorran Government is devoting all available resources to the ratification of or accession to the principal treaties relating to terrorism in 2004. However, on 14 April 2004, the Andorran Parliament approved Andorra's accession to the following four conventions, in respect of which the instruments of accession may be deposited at either the headquarters of the International Civil Aviation Organization or the Secretariat of the United Nations before summer 2004:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York on 14 December 1973;
- International Convention against the Taking of Hostages, signed at New York on 17 December 1979;
- International Convention for the Suppression of Terrorist Bombings, signed at New York on 15 December 1997;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.

1.10. As indicated on page 14 of the second report, the Government of Andorra voted in favour of acceding to the Convention on the Prohibition of the Development, Stockpiling and Use of Chemical Weapons and on their Destruction. The Committee has taken note of the intention of the Government of Andorra and would be grateful for a report on its implementation at the earliest opportunity.

Andorra reaffirms its willingness to participate in the efforts undertaken by other States to keep the world free of nuclear, chemical and biological weapons.

As indicated in the second report, on 31 July 2002 during a meeting of the Council of Ministers, the Andorran Government approved Andorra's accession to the Convention on the Prohibition of the Development, Stockpiling and Use of Chemical Weapons and on their Destruction. Following the approval of the General Council, given on 17 October 2002, the Permanent Mission of Andorra to the United Nations deposited Andorra's instrument of accession on 27 February 2003.

Given that article XXI, paragraph 2, provides that the Convention shall enter into force on the 30th day following the date of deposit of the instrument of accession, it entered into force in respect of Andorra on 29 March 2003.